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FROM U.S. MISSION TO THE UN AGENCIES IN ROME

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SUBJECT: PLANT GENETIC RESOURCES TREATY LIKELY TO ENTER
INTO FORCE IN JUNE 2004, RAISING QUESTION OF U.S.
RATIFICATION

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Sensitive but unclassified -- please handle accordingly.

1. (SBU) Summary: According to the FAO Secretariat, 36 countries have now submitted ratification instruments for the International Treaty (IT) for Plant Genetic Resources for Food and Agriculture. Anticipated action by EU member states by March 31 would likely take the number of ratifications over 40, triggering entry into force 90 days later. Meanwhile, FAO still lacks \$1.2 million in voluntary contributions to hold three important IT-related meetings in 2004. In addition, the IT Governing Body (GB) will have to hold its first meeting within two years of the treaty's entry into force. Although some developing countries may press for an early meeting of the GB, senior officials responsible for plant genetic resource issues in the FAO Secretariat prefer to allow more time for preparatory work and to wait until a larger number of countries have ratified and can participate in the GB. The USG needs to decide soon whether we want to ratify the IT and participate fully in the process, or whether our interests are better served as marginalized observers. End summary.

2. (U) On March 16, Alternate Permrep discussed progress on the IT with Jose Esquinas-Alcazar, Secretary of the FAO Commission on Genetic Resources for Food and Agriculture. The Commission serves inter alia as the Interim Committee for the IT. (Background: The IT will be the principal international legal instrument governing transfers of plant genetic material for food and agriculture. It establishes a multilateral system for facilitated access and benefit sharing that applies to 35 crops and a number of forages. Conditions of access and benefit sharing requirements will be specified in an as-yet undrafted Material Transfer Agreement [MTA].)

3. (U) Entry into Force: Esquinas reported that 36 countries had already submitted their instruments of ratification. He said that the EU Council of Ministers for Fisheries and Agriculture meeting on February 24 agreed that the EC and all member states ready to do so would submit their instruments of ratification by March 31. Action by the EU en bloc will take the number of ratifications above the minimum number of ratifications (40), thereby triggering entry into force 90 days thereafter -- probably sometime in late June 2004.

4. (U) Planned Meetings in 2004: At present, the FAO Secretariat envisions holding three IT-related meetings

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in 2004, subject to available funds. In mid July there would be held the First Meeting of the Expert Group on the Standard MTA and the First Meeting of the Open-ended Working Group on Rules of Procedure, Financial Rules and Compliance. In November, there would be the Second Meeting of the Commission on Genetic Resources for Food and Agriculture acting as the IT Interim Committee.

5. (U) Funding: Holding the above three meetings would cost \$1.6 million, including interpretation, translation and developing country participation costs, according to Esquinas. Thus far FAO has received about \$280,000 in voluntary contributions, of which \$25,000 has already been spent on preparatory work. (The contributors thus far are Japan, Spain, Canada, USA, Ireland and Norway.) An additional \$180,000 is available from FAO's regular program budget. That leaves a shortfall of about \$1.2 million. Esquinas is hopeful that the flurry of

ratification activity in the EU this month will bring in additional contributions, but he remains concerned that, if FAO does not receive adequate funding commitments within a week or so, the July 2004 meetings will have to be further postponed.

16. (SBU) Governing Body: The first GB will have to decide on a number of important questions, including the level, form and manner of monetary payments upon commercialization; the standard MTA; compliance mechanisms; and the funding strategy. The IT text does

not specify explicitly how soon after entry into force the GB must be held, but Article 19.9 requires that the GB must meet at least every two years. FAO's Legal Department has therefore concluded that the GB meeting should take place within two years of the IT's entry into force. According to Esquinas, some developing countries have already expressed a preference for an early meeting of the GB. Under Article 19.10, a special session of the GB must be held if one-third of the countries that have ratified the IT so request. If FAO's Africa Regional Group (which would represent about half of the countries that have ratified the IT) were to decide to request an early GB meeting, the FAO Secretariat would be bound to honor that request.

17. (SBU) GB Timing: Esquinas said he personally favors holding off on a GB meeting for two reasons.

-- First, a lot of important preparatory work still remains to be done; probably two Interim Committee sessions and several MTA meetings would be desirable before the first GB.

-- Second, it is important that the GB be as broadly representative as possible, and this will only be the case after significantly more than 40 countries have ratified; this could take months if not years.

18. (SBU) Involvement of Other Fora: That said, Esquinas added that he came away from the recent Conference of Parties of the Convention on Biological Diversity (CBD) in Kuala Lumpur with the realization that, if the IT process does not get off the ground relatively quickly, it will leave a vacuum that might be filled -- unhelpfully -- by CBD discussions on access and benefit sharing. He noted that the World Intellectual Property Organization (WIPO) also is getting involved -- specifically this week's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Esquinas sees a danger in the involvement of other organizations and bodies, since in his view the issues surrounding plant genetic resources for food and agriculture are very different from those related to natural genetic biodiversity.

19. (SBU) Comment: As long as the IT process remains in the hands of the 165-member Interim Committee, the USG (which is a member of the Interim Committee and has signed -- but not ratified -- the IT) will continue to be able to influence the discussion. Thereafter, we risk being marginalized as observers, as has been the case in the CBD. Another concern is that small developing countries are disproportionately represented among the early ratifiers, and their interests may differ from ours. If we want to be full participants in the key early deliberations of the IT, a decision on whether the U.S. ratifies the IT needs to be made in near future.

Cleverley

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